

THE HONORABLE FRED VAN SICKLE

F. MIKE SHAFFER, WSBA No. 18669
BRADLEY B. JONES, WSBA NO. 17197
KENNETH G. KIEFFER, WSBA No. 10850
JOHN C. GUADNOLA, WSBA No. 08636
GORDON THOMAS HONEYWELL LLP
1201 Pacific Avenue, Suite 2100
Tacoma WA 98402-4314
253-620-6500

STEVE W. BERMAN, WSBA No. 12536
TYLER S. WEAVER, WSBA No. 29413
JENIPHR BRECKENRIDGE, WSBA No. 21410
ERIN K. FLORY, WSBA No. 16631
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 8th Avenue, Suite 3300
Seattle, WA 98101
206-623-7292
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In re METROPOLITAN SECURITIES
LITIGATION

NO. CV-04-025 FVS

CLASS ACTION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION *IN LIMINE* TO
PRECLUDE PwC FROM ARGUING
THAT THE JURY CAN CONSIDER
DISCLOSURES MADE IN PORTIONS
OF THE REGISTRATION STATEMENTS
OTHER THAN THE FINANCIAL
STATEMENTS TO DETERMINE
WHETHER ANY MISSTATEMENT
AND/OR OMISSION WAS MATERIAL
UNDER SECTION 11

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FROM ARGUING THAT THE JURY CAN CONSIDER
DISCLOSURES MADE IN PORTIONS OF THE
REGISTRATION STATEMENTS - 1 of 9

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LAW OFFICES
GORDON THOMAS HONEYWELL LLP
1201 PACIFIC AVENUE, SUITE 2100
POST OFFICE BOX 1157
TACOMA, WASHINGTON 98401-1157
(253) 620-6500 - FACSIMILE (253) 620-6565

Hearing Date: March 3, 2009
9:00 a.m.
WITH ORAL ARGUMENT

I. PRELIMINARY STATEMENT

PwC intends to argue that the false and misleading statements and omissions in the FY 2000 certified financial statements audited by PwC are rendered immaterial because of disclosures in other portions of the registration statement. This argument is improper and misleading. Disclosures in other parts of a registration statement cannot cure, fit or lessen false and misleading financial statement disclosures. SEC and accounting authority require that the financial statements stand on their own. PwC cannot attempt to shoehorn other sources of information available to the investor to supply disclosures missing from the financial statements themselves; and the law requires complete disclosure without need for the investor to search for pieces of the puzzle from disparate sources. Accordingly, such arguments by PwC is improper and would merely confuse and mislead the jury, and the Court should preclude PwC making such arguments during the trial.

II. ARGUMENT

The existence of information elsewhere in a registration statement cannot alter PwC's responsibility to be truthful about whether it did a GAAS compliant audit and whether the FY 2000 financial statements conformed to

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1 GAAP. Nor does such “unexpertised” information otherwise relieve PwC of
2 the need for a qualified or adverse opinion or a disclaimer of opinion. Such
3 information also cannot cure PwC’s failure to present a statement of “parent
4 only” cash flows for Metropolitan and Summit, as required by GAAP.
5 Financial statements not prepared in accordance with GAAP “will be
6 presumed to be misleading or inaccurate, despite footnote or other
7 disclosures . . .” *Deephaven Private Placement Trading, Ltd. v. Grant*
8 *Thornton & Co.*, 454 F.3d 1168, 1176 -1177 (10th Cir. 2006).
9

10 The auditor cannot look to information located outside the financial
11 statements and accompanying notes to supplement his otherwise false and
12 misleading opinion. The legal concept of materiality of information in the
13 marketplace is based on a straightforward examination of the information
14 available to the marketplace and its importance to investors at the time.
15 See *Basic Inc. v. Levinson*, 485 U.S. 224, 232 (1988). And it is clear that
16 failures or omissions in the registration statement, or other disclosure
17 documents do not cure shortcomings in the financial statements. *Ponce v.*
18 *S.E.C.*, 345 F.3d 722, 730-732 (9th Cir. 2003).
19

20 Courts have consistently held that financial statement disclosures
21 must be clear, complete and cannot be contradictory or spread out piece-
22 meal within the same document or buried in a mass of verbiage. A
23 disclosure is inadequate under the federal securities laws if it takes a
24

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1 financial analyst to discern the truth. *Virginia Bankshares, Inc. v. Sandberg*,
2 501 U.S. 1083, 1089 (1991) (where disclosures conflict, “[I]f it would take a
3 financial analyst to spot the tension between [the truth and the misleading
4 statement], whatever is misleading will remain materially so, and liability
5 should follow”); see *Seinfeld v. Gray*, 404 F.3d 645 (2d Cir. 2005) (Omission
6 of information from proxy statement is actionable under Securities and
7 Exchange Commission (SEC) rule prohibiting false or misleading statements
8 in proxy statements, either if SEC regulations specifically require disclosure
9 of omitted information in proxy statement, or if omission makes other
10 statements in proxy statement materially false or misleading); *Greenapple v.*
11 *Detroit Edison Co.*, 618 F.2d 198 (2d Cir. 1980) (method of presentation
12 that obscures or distorts significance of material facts violates § 11); *Gould*
13 *v. American-Hawaiian S.S. Co.*, 535 F.2d 761, 774 (3d Cir. 1976)
14 (information may be so “buried” in a proxy statement that it constitutes a
15 material misstatement or omission of fact, observing that “nowhere [is
16 there] a statement giving emphasis to the conflicts of interest similar to that
17 given to the board’s approval of the merger agreement” [citations omitted]);
18 *Gerstle v. Gamble-Skogmo, Inc.*, 478 F.2d 1281, 1297 (2d Cir. 1973) (“it is
19 not sufficient that overtones might have been picked up by the sensitive
20 antennae of investment analysts”); *SEC v. Falstaff Brewing Corp.*, 629 F.2d
21 62 (D.C. Cir. 1980) (disclosure cannot be buried in a mass of information
22
23
24

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1 that would give the correct impression only when pieced together; proxy
2 statement was inadequate in that it failed to disclose with sufficient clarity
3 the effect of a proposal on a corporation's control where the data necessary
4 to calculate the impact of the proposal was spread over two pages).

5
6 Plaintiffs also contend, and the evidence is, that investors in
7 Metropolitan and Summit securities did not receive adequate warnings in
8 the form of financial statement disclosures about, *inter alia*, the dangerous
9 liquidity created by the false accounting for the FLIP and Koa transactions,
10 intercompany transactions, lack of adequate evidential matter to support
11 asset valuations and the inappropriate booking of interest income on loans
12 long delinquent. Plaintiffs' underwriting expert, James Miller, a highly
13 experienced and sophisticated analyst, spent many hours poring over
14 numerous reports in order to prepare parent only cash flows for Metropolitan
15 and Summit which amply demonstrate the dangerous liquidity condition of
16 Metropolitan and Summit and their absolute dependence upon the continual
17 sale of hundreds of millions of dollars in securities. *See*, Miller Rebuttal
18 Report, September 4, 2009, pp. 3-8. Here, PwC cannot argue that
19 disclosures outside the financial statements themselves cure such
20 misstatements or omissions.
21

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1 It is ironic that PwC makes this argument while simultaneously arguing
 2 in one of its motions *in limine* that it cannot be held liable for any portion of
 3 the prospectus beyond its own report in the financial statements.
 4

5 III. CONCLUSION

6 For the foregoing reasons, Plaintiffs respectfully request that the Court
 7 preclude PwC from introducing evidence, advancing argument or otherwise
 8 stating at trial that the jury can consider disclosures made in portions of the
 9 Registration Statements other than the financial statements to determine
 10 whether any misstatement and/or omission was material under Section 11.

11 Dated this 16th day of February 2010.

12 GORDON THOMAS HONEYWELL LLP

13 By s/ Bradley B. Jones

14 F. Mike Shaffer, WSBA No. 18669
 15 Bradley B. Jones, WSBA No. 17197
 16 Kenneth G. Kieffer, WSBA No. 10850
 17 John C. Guadnola, WSBA No. 08636
 18 Attorneys for Plaintiffs

19 HAGENS BERMAN SOBOL SHAPIRO LLP

20 By s/ Steve W. Berman

21 Steve W. Berman, WSBA No. 12536
 22 Erin K. Flory, WSBA No. 16631
 23 Jeniphr Breckenridge, WSBA No. 21410
 24 Tyler S. Weaver, WSBA No. 29413
 25 Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. The Court or the CM/ECF system will send notification of such filings to the CM/ECF participants listed below, and I will mail the same via U.S. Postal Service to the non-CM/ECF participant(s).

Alison Killen Blair at ablair@orrick.com

Andrew K Polovin at andrew.polovin@bartlit-beck.com;

anne.doyle@bartlit-beck.com

Brian Charles Frontino at bfrontino@stroock.com; lacalendar@stroock.com

Brian D Buckley at bbuckley@fenwick.com; doconnor@fenwick.com;

kroth@fenwick.com

Carl J Oreskovich at carl@ettermcmahon.com; roni@ettermcmahon.com

Charles S Wright at charleswright@dwt.com; brianspangler@dwt.com

Christopher Lind at chris.lind@bartlit-beck.com; anne.doyle@bartlit-beck.com

Christopher D Landgraff at chris.landgraff@bartlit-beck.com

Christopher G Emch at emchc@foster.com; pateb@foster.com

Daniel F Shea at dfshea@hhlaw.com

Darrell W Scott at scottgroup@mac.com; ssimatos@mac.com

David D Hoff at dhoff@tousley.com; btaylor@tousley.com

Diana Lynn Weiss at dlweiss@kslaw.com

E Joseph Giometti at jgiometti@orrick.com; jcopoulos@orrick.com;

pbenetz@orrick.com

Earl M Sutherland at esutherland@rmlaw.com; jlading@rmlaw.com

Elizabeth J Cabraser at ecabraser@lchb.com

Erin K Flory at erin@hbsslaw.com; jon@hbsslaw.com

Fabrice Vincent at fvincent@lchb.com; dclevenger@lchb.com

Gary I Grenley at ggrenley@grebb.com

George S Azadian at gazadian@stroock.com; cdusi@stroock.com

J Scott McBride at scott.mcbride@bartlit-beck.com

James Bernard King at jking@ecl-law.com; kschulman@ecl-law.com

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1 James K Barbee at jim@golbeckroth.com
2 James M Shaker at shaker@ryanlaw.com; callahan@ryanlaw.com
3 James P Cusick at jcusick@kslaw.com
4 James P McNeill, III at mcnej@foster.com
5 Jeffrey S Miller at milje@foster.com; kellie@foster.com; snydd@foster.com;
6 hickc@foster.com
7 John Degnan Munding at munding@crumb-munding.com;
8 brittany@crumb-munding.com
9 John M. Hughes at john.hughes@bartlit-beck.com
10 Julia B Strickland at jstrickland@stroock.com; tmitchell@stroock.com;
11 lacalendar@stroock.com
12 Kelly P Corr at kcorr@correronin.com; dpatterson@correronin.com;
13 reception@correronin.com
14 Kenneth P Herzinger at kherzinger@orrick.com
15 Kevin Daniel O'Rourke at kevin@southwellorourke.com
16 Kim D Stephens at kstephens@tousley.com; bkimsey@tousley.com
17 Leslie R Weatherhead at lwlibertas@aol.com; emilyr@wkdtdlaw.com;
18 janetj@wkdtdlaw.com
19 Lester C Houtz at lester.houtz@bartlit-beck.com; anne.doyle@bartlit-beck.com
20 Mark Roth at mark@golbeckroth.com
21 Mary D Manesis at mmanesis@stroock.com; cdusi@stroock.com
22 Meredith Moss at mmoss@orrick.com
23 Paul H Trincherro at ptrincherro@grebb.com
24 Peter Jennings Grabicki at pjg@randanco.com; scc@randanco.com;
25 nlg@randanco.com
26 Philip S Beck at anne.doyle@bartlit-beck.com;
susan.dandrea@bartlit-beck.com
Richard M Heimann at rheimann@lchb.com; lsimms@lchb.com
Robert J Nelson at rnelson@lchb.com
Ronald L Berenstain at rberenstain@perkinscoie.com;
jstarr@perkinscoie.com
Stellman Keehnel at stellman.keehnel@dlapiper.com;
nina.marie@dlapiper.com
Stephen M Rummage at steverummage@dwt.com; jeannecadley@dwt.com
Steve W Berman at steve@hbsslaw.com; carrie@hbsslaw.com;

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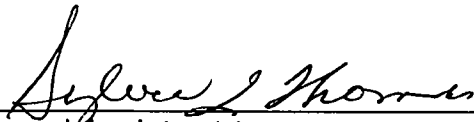
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1 heatherw@hbsslaw.com

2 Steven Fogg at sfogg@corrchronin.com; hpowell@corrchronin.com

3 Timothy L Filer at filet@foster.com; howej@foster.com

4 Tyler S Weaver at tyler@hbsslaw.com; bonneym@hbsslaw.com;
5 jeniphr@hbsslaw.com

6 
7 Legal Assistant to:
8 F. Mike Shaffer, WSBA No. 18669
9 Bradley B. Jones, WSBA No. 17197
10 Kenneth G. Kieffer, WSBA No. 10850
11 John C. Guadnola, WSBA No. 08636
12 GORDON THOMAS HONEYWELL LLP
13 1201 Pacific Avenue Suite 2100
14 Tacoma WA 98402
15 253-620-6500
16 253-620-6565
17 Co-Lead Counsel for Lead Plaintiffs

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19
20
21
22
23
24
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